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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,657	02/28/2002	John A. Scott	112056-0035	2276
24267	7590	06/23/2005	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			CONTINO, PAUL F	
		ART UNIT	PAPER NUMBER	
		2114		

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Office Action Summary	Application No.	Applicant(s)
	10/086,657	SCOTT, JOHN A.
	Examiner Paul Contino	Art Unit 2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 31 May 2005.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-4, 6-20, 22-38 and 40-49 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) 1-4, 6, 7, 13-20, 22-38 and 40-49 is/are allowed.  
6) Claim(s) 8-12 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on 20 December 2004 is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed March 31, 2005, regarding the 35 U.S.C. 102(b) rejections on pages 18 through 20 pertaining to Claims 8 and 12 have been fully considered but they are not persuasive.

Examiner respectfully disagrees with Applicant's arguments that the prior art reference Bhanot et al. does not disclose a **secondary data access port**. Examiner interprets the disclosure of the establishment of a separate secondary connection by Bhanot et al. upon failure as implying use of a secondary port (Fig. 3; column 5 lines 14-16 and 44-46; column 5 line 66 through column 6 line 2). Examiner interprets the terms "clients" and "file servers" as being equally interchangeable in order to apply prior art.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8 and 12 rejected under 35 U.S.C. 102(b) as being anticipated by Bhanot et al. (U.S. Patent 5,796,934).

As in claim 8, Bhanot et al. disclose a cluster interconnect, the cluster interconnect providing a communications link to a partner file server in the file server cluster (column 5 lines 29-31);

a primary data access port for receiving file service operations from file server clients (column 5 line 66 through column 6 line 1);

a secondary data access port, the secondary data access port only being active when the file server detects that the partner file server has suffered an error condition, wherein the file server processes file service operations received via the secondary data access port to provide file service operations to clients of the partner file server (column 5 lines 14-16, 44-46, 66 through column 6 line 2).

As in claim 12, Bhanot et al. disclose a computer-readable medium, including program instructions (column 6 lines 6-37, 60 through column 7 line 8, where exemplary computer system is interpreted to include server as well as client), for:

detecting that a failed server has suffered an error indication (Fig. 4 #402; column 5 lines 29-31 and lines 35-36);

asserting ownership of a set of storage devices normally owned by the failed file server (Fig. 3; column 6 lines 35-37 where the database sessions refer to communicating with a storage

device and 48-52 where it is inherent that the recovery server process the failed primary server's intended instructions on the failed primary server's storage device);

activating a secondary data access port for receiving connections over a network (column 5 lines 7-8 and line 66 through column 6 line 2);

processing file service operations received by one or more clients over the data access port (column 6 lines 48-52).

\* \* \*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 11 is rejected under 35 U.S.C. 102(e) as being anticipated by Sundaresan et al. (U.S. PGPub 2003/0033412 A1).

As in claim 11, Sundaresan et al. disclose means for communicating with a partner file server in the file server cluster (Fig. 4 and paragraph [0023], implied in paragraph [0040] lines 4-6 in the periodic messaging between servers);

means for identifying that the partner file server has suffered an error condition (paragraph [0039] lines 3-7 where “error message” is interpreted as any message from failing server to recovery server of failing server’s inability to properly continue operation);

means asserting ownership of disks normally owned by the partner file server (paragraph [0034] lines 1-5 and paragraph [0040] lines 9-10 where it is inherent there be a means of accessing the failed server’s disks upon failover);

means for processing file service operations from clients of the partner file server (paragraph [0034] lines 1-5 and paragraph [0036] lines 9-11, where it is inherent there be a similar means for the recovery server to continue the functionality of the first server and its “processing” of “file service operations.”).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9 and 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Bhanot et al. as applied to claim 8, in view of Sundaresan et al.

Bhanot et al. do not specifically disclose use of failover in a “virtual interface” environment of claims 9 and 10 (paragraph [0036] lines 3-4 and 9-11; background in paragraphs

[0025] and [0027]) with a “network protocol being free of support for moving a transport address” of claim 8. Sundaresan et al. disclose use of failover in a “virtual interface” client and server environment.

It would have been obvious to a person skilled in the art at the time the invention was made to include a “virtual interface” as disclosed by Sundaresan et al. in the client/server environment of Bhanot et al. This would have been obvious because Bhanot et al. disclose a similar invention to Sundaresan et al. and never limit the scope of the network protocol to a “non-virtual” interface. Further, Bhanot et al. disclose the client automatically establishing a connection to a designated secondary server (column 5 lines 44-46), alluding to the “virtual interface” addressing and connecting of servers in a similar fashion as disclosed by Sundaresan et al.

***Allowable Subject Matter***

5. Claims 1-4, 6-7, 13-20, 22-38, and 40-49 are allowed.

6. The following is an examiner’s statement of reasons for allowance:

7. As in claim 1:

The inclusion of a first symbolic name, the first symbolic name generated by the failover client from a second symbolic named associated with the file server, when read

within the remainder of the limitations of the claim, makes the claim allowable. Claims 2-4 are allowed based upon their dependency to claim 1.

8. As in claims 6, 13, 40, 42, 48, and 49:

The inclusion of **appending a set text string to a name of the first file server**, when read within the remainder of the limitations of the claims, makes the claims allowable. Claims 7, 41, and 43-47 are allowed based upon their respective dependency to claims 6, 40, and 42.

9. As in claims 14, 22, 30, and 38:

The inclusion of **the first file server associated with a file server name; computing from the file server name, by a file system process on the client computer, a failover name associated with the file server**, when read within the remainder of the limitations of the claims, makes the claims allowable. Claims 15-20, 23-29, and 31-37 are allowed based upon their respective dependency to claims 14, 22, and 30.

10. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Contino whose telephone number is (571) 272-3657. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm, first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3657.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PFC  
June 15, 2005



**SCOTT BADERMAN**  
**PRIMARY EXAMINER**